

---

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

Commission Request for Comments    )  
On Its Proposed Eligible Services List )  
For the Schools and Libraries Universal       ) CC Docket No. 02-6  
Services Mechanism Pursuant to Section       )  
254 of the Federal Telecommunications Act     )  
of 1996    )  
  )  
  ) FCC Docket No. 05-158  
  )

**INITIAL COMMENTS OF THE  
TEXAS OFFICE OF PUBLIC UTILITY COUNSEL**

The Texas Office of Public Utility Counsel, (“Texas OPC”), offers these initial comments, pursuant to the Federal Communications Commission’s (“Commission” or “FCC”) request for comment on the Universal Services Administrative Company’s (USAC) proposed eligible services list for universal service support for libraries and schools pursuant to Section 254 of the Federal Telecommunications Act (FTA) of 1996.<sup>1</sup> Texas OPC represents the interests of residential and small commercial telephone customers before the Public Utility Commission of Texas, state and federal courts and the FCC. These initial comments address Texas OPC’s views related to USAC’s modifications to the eligible services list for universal services support (USF) under FTA §254.

---

<sup>1</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (codified as amended in scattered sections of 15 and 47 U.S.C.) (FTA)

## I. TEXAS OPC COMMENTS

Having reviewed USAC's draft eligible services list released on or about August 15, 2005, Texas OPC respectfully tenders the following comments to the Commission:

(1) Electronic Library/On-Line Access: Texas OPC advances that the "Electronic Library/On-Line Access Services Catalog" should be made eligible for USF support for libraries and schools pursuant to FTA §254. Texas OPC notes that the Commission's implementation of FTA §254 centers on what services are eligible for USF support for libraries and schools by determining the "educational purpose" for the proposed service. An "educational purpose" has been defined as, in the case of schools and libraries, for those activities that are integral, immediate and proximate to education of students or to the provision of library services to library patrons.<sup>2</sup> The Commission determined that "internet access" would be funded in order to implement FTA §254.<sup>3</sup> USAC has determined that "internet access" would be limited to the provision of "basic conduit access" to the Internet, and apply to services used for Internet Access. Internet Access has been defined as:

Internet Access is an information service. The Communications Act of 1934 (as amended) defines an information service as "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or

---

<sup>2</sup> *In the Matter of Schools and Libraries Universal Service Support Mechanism*, FCC 03-101, CC Docket No. 02-6 (Second Report and Order) (rel. April 30, 2003) at ¶17.

<sup>3</sup> See FTA §254(h)(1)(B).

operation of a telecommunications system or the management of a telecommunications service.”<sup>4</sup>

Texas OPC opines that the electronic library/on-line access services characterizes the definition of “internet access” and further supports the “educational purposes” standard contemplated by the FTA in that such access to electronic library services would be beneficial to library patrons and students alike. Such services clearly are “integral, immediate and proximate” to education for students and library services to the general public. Further, it is not entirely clear whether the USAC proposal is to not extend eligibility to this service if fee-based. Texas OPC suggests that the service should be supported even if fee-based. A reasonable cap on the assessed fees could be considered for reimbursement in order to minimize rash expenditures. However, the benefits that internet access to an electronic library/on-line services catalog can provide to students and the general public far outweigh the associated costs and would be a reasonable and productive use of USF support.

(2) Filtering Services: Texas OPC notes that Filtering Services should be included in the list of supported services for libraries and schools as long as it is an integrated service that may be provided by an Internet Service Provider (ISP). The availability of dangerous and/or inappropriate Internet sites conflicts with the purposes of education and the legitimate activities of public library facilities. The presence of filtering services allows for the “educational purposes” as outlined in FTA §254 to be accomplished and further promote public safety and privacy concerns. It could further prevent improper usage of library and school facilities from being improperly used by patrons and students. It appears, however, that USAC would provide USF support for filtering services under the aforementioned ISP

---

<sup>4</sup> 47 U.S.C. 153(20).

arrangement. In light of the public safety and privacy concerns related to “spyware”, “adware” and other inappropriate Internet content, Texas OPC suggests that expansion of support for filtering services should go beyond those offerings from ISPs and include some individual filtering software that can provide comparable service at a reasonable and competitive price.<sup>5</sup>

(3) Internet Content: Texas OPC recognizes USAC’s position related to fee-based internet content. However, as in the situation related to the Texas OPC’s stance on the “Electronic Library/On-Line Access”, there are some useful informational and educational resources available on the Internet for students and library patrons. Currently, such resources may not be available to the public due to USAC’s classification of such content as “ineligible” for USF support. Texas OPC contends that this classification is counter to the “educational purposes” of FTA §254 and there should be a limited availability of these fee-based services for schools and libraries.<sup>6</sup> Texas OPC suggests that a review of some of the more relevant and useful fee-based sites be included for USF support. After such review, USAC could list a number of acceptable fee-based internet content sites eligible for USF support and consider a cap on expenditures subject to USF support for such internet sites.

## II. CONCLUSION

In closing, Texas OPC appreciates the opportunity to present its comments related to USAC’s proposed services list for the next fiscal year. It

---

<sup>5</sup> It could be argued that the acquisition of specific software may go beyond the criterion set for “internet access” to include only services and not purchases of equipment. That view turns on whether the software is considered “equipment” or whether one considers the purpose and function of such software and classifies it as a “service”.

<sup>6</sup> Texas OPC recognizes USAC’s procedure by which ineligible functionalities of a product or service can be evaluated. However, Texas OPC considers this service to be eligible as it is consistent with the “educational purposes” outlined in FTA §254.

is hoped that USAC will consider Texas OPC's positions on the aforementioned services and include them in its final services list as these services promote educational purposes for schools and libraries.

Promoting the safety and welfare of all Americans.

August 25, 2005

Respectfully submitted,

Suzi Ray McClellan  
Public Counsel  
State Bar No. 16607620

/s/

Mark Gladney  
Assistant Public Counsel  
**TEXAS OFFICE OF PUBLIC UTILITY**

**COUNSEL**

1701 N. Congress Avenue, Suite 9-180  
P.O. Box 12397  
Austin, Texas 78711-2397  
512/936-7500 (Telephone)  
512/936-7520 (Facsimile)